United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

AUG 22 1975 75-7241

United States Court Of Appeals
Second Circuit

James C.Gabriel,Pro Se, 75-7241

Objectant-Appellant,

-against-

Betty Levin,Alleghany Corporation
and Robert LeVasseur,

Plaintiffs-Appellees,

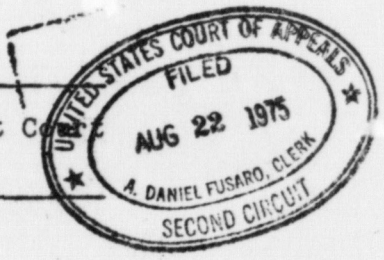
and

Mississippi River Corporation,
Missouri Pacific Railroad Company,
Robert H.Craft,T.C.Davis and
Thomas F.Milbank, as Defendants-Appellees.

Reply Brief For James C.Gabriel,Pro Se,

Objectant-Appellant

On Appeal From The United States District Court
For The Southern District Of New York



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United States Court Of Appeals
Second Circuit

James C.Gabriel.Pro Se, 75-7241

Objectant-Appellant,

-against-

Betty Lewin,Alleghany Corporation
and Robert LeVasseur,

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Reply Brief For James C.Gabriel,Pro Se,

Objectant-Appellant

Statement

This is a reply brief on behalf of Objectant-Appellant James C.Gabriel,Pro-Se,in response to the brief of Appellees on the Appeal of James C.Gabriel from an Order of"3/19/75 PETITIONERS MOTION IS HEREBY DENIED.

SO ORDERED.
EDWARD WEINFELD"
U.S.D.J.

FILED MAR 21 1975 U.S.DISTRICT COURT,S.D.OF N.Y.,with respect to,among other things,evaluating Petitioner's Class B MoPac equity bearing Common Stock under due process of law according to the MoPac "Agreed System Plan" of Reorganization or Charter of 1954-1955, 290 ICC 477,Finance Docket#9918,in order to save the U.S.Government over $100 million in capital gains taxes,besides saving Class B owner Stockholder over $20,000 in new securities for each share of Class B

that appellant James C.Gabriel possesses.

First off to begin with,the Interstate Commerce Commission's Missouri Pacific Railroad "Agreed System Plan" of Reorganization of 1954-1955 ,290 I.C.C. 477,Finance Docket #9918 is a law of the United States because it was approved by the I.C.C.July 29,1954 (See 290 I.C.C. p.624;See also Document #236,p.2) and certified it to the United States District Court of jurisdiction in Saint Louis,Eastern Division,Eastern Judicial District Of Missouri, which in turn approved it and certified it to the I.C.C.on February 25,1955,by Honorable George H.Moore,U.S.D.J.(See Missouri Pacific Railroad Company Reorganization,Finance Docket #9918,Washington, D.C. 1955,pages 260 and 266,Submission Of Plan Of Reorganization Pursuant To Section 77 Of The Bankruptcy Act,As Amended) The MoPac "Agreed System Plan" of Reorganization must be followed in a Section 20a proceedings when dissident Class B equity bearing Stockholders are also roped in in a "Plan of Recapitalization" that the dissident Class B Common Stockholders want no part of this so called "Class Action" which started as a Class Action by Order of Honorable Frederick vanPelt Bryan on October 9,1968,the Nature of the Action being that "dividends declared and paid by the MoPac board of directors on the Class B stock have been and are unreasonably low;that Mississippi has misused its voting control over MoPac's board of Directors in furtherance of a plan and conspiracy with said directors to improperly favor Mississippi and other Class A stockholders at the expense of the Class B stockholders; and that such conduct will continue unless enjoined by the Court," Ordered that any member of the class desiring to intervene in this action must no later than December 20,1968,either obtain the consent of all parties to said intervention or serve notice of motion for leave to intervene, (See Document or Item #48 "Notice of Settlement of Order making this a Class Action on Dividends and Conspiracy) and then 4 years later,on December 18,1972,come out with a "Settlement Agreement" signed by Alleghany Corp.,Missouri Pacific Railroad Company and Mississippi River Corporation,to give for each Class B a value of $2,450 per Share,made up of $850 cash, and 16 shares of new common stock,or a total value of $2,450 per B (See Documents or Items 198 &199),this $2,450 value per B coming

from Class B's own values,which amount to over $22,500 per Class B, made up of $349,192,000 Retained Income and $545,000,000 consolidated nondepreciable properties,including land and land rights (See MoPac 1972 Annual Report,pages 19 and 21) OR MINERAL RIGHTS,which makes a total of approximately $894,000,000,which when divided by by 39,731 shares of Class B,amounts to over $22,500 per Class B, so that Class B is being defrauded over $20,000 per Share,and if the Class B participates in the new setup,it means that the ClassB for its 39,731 shares,loses $615,000,000 in values to Class A,or approximately $395,000,000 to Mississippi River Corp.which controls about 64% of Class A,Class A being a $5 Preferential stock,with a liquidatin value of $100 per share.(See 290 I.C.C. page 492;see also Document or Item #236,page 2)

Here is Class A Preferential stock of $5 dividend when and if earned and declared,with no equity value,now becoming an equity bearing stock,taking over Class B's majority values of over $615 million,with the co-operation of Division 3 of the I.C.C. and the permission of Honorable Weinfeld's Court which does not allow(Item208) Appellant William R.Wesson,who is suing for himself and for others similarly situated Class B Stockholders,as a Class, to opt out of this Class Action,which now has changed from a Class Action on dividends and conspiracy to a "Plan of Recapitalization" where B stockholders are corralled into a box canyon to be forced to give up their equity bearing Class B stock worth about $22,500 per Share for $2,450 per Share,with no right for evaluation under due process of law according to the Constitution or laws of the United States, Class A paying no taxes for this defrauding the Class B out of over $615 million,the United States Government I.R.S being defrauded out of over $100 million in capital gains taxes.This unlawful roping in of the dissident Class B Stockholders to force them to lose over $20,000 per Class B without the right to opt out of a Class Action that is not of their asking or making,not giving them the right to evaluation under MoPac's Charter or "Agreed System Plan"of Reorganization of 1954-1955 which is a law of the United States, makes this whole "Plan of Recapitalization" Constitutionally unlawful.Even though the ICC Division 3 says it has "plenary power" in this instant case Section 20a does not give the ICC the right to defy the Constitution of the U.S. by the ICC helping to defraud the United States Government out of over $100 million in taxes,and also helping to defraud the Class B Stockholders out of over $615 million in values,and giving all this to Class A $100 value stock at no cost to the Class A.If the ICC has such power of favoritism, then this favoritism of one over another is unconstitutional.

SEE DOCUMENT # 238 OF THIS RECORD

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

BETTY LEVIN, et al.,

Plaintiffs,

v.

MISSISSIPPI RIVER CORP., et al.,

Defendants.

67 Civ. 5095

BEFORE: HON. EDWARD WEINFELD, D. J.

March 19, 1975
11:00 A. M. - Room 706

APPEARANCES:

JAMES C. GABRIEL,
Plaintiff pro se

DONOVAN, LEISURE, NEWTON & IRVINE,
Attorneys for defendants
BY: M. LAUCK WALTON, ESQ., Of Counsel.

POINT I-REPLY

This is not"yet another appeal--the fourth--from a final judgment entered in this case over two years ago," because this is the first time that appellant is appealing from this Class Action"Settlement Agreement" which is not binding upon appellant because he did not agree to this Class action.Appellant,as an individual that is not bound by any Class Action of MoPac, is appealing for himself from a Class Action decision that did not apply to him because appellant did not join the Class Action of the Class B Stockholders that sued as a Class on dividends and conspiracy in 1968,which four years later was convoluted on December 18,1972 into a Class Action in respect to a "Settlement Agreement" on a "Plan of Recapitalization,"under Section 20a of the Interstate Commerce Act as passed by Congress. He voted AGAINST RECAP.

Appellant James C.Gabriel is suing in order to have his Class B equity bearing Common Stock evaluated under due process of law according to the "Agreed System Plan" of Reorganization or Charter of MoPac by the I.C.C. and the United States District Court in Saint Louis in 1954-1955,which is a law of the United States and must be enforced.

The "Settlement Agreement" dated as of December 18,1972by and between Alleghany Corporation,Missouri Pacific Railroad Company and Mississippi River Corp.,are the immediate parties in the Class Action on a "Settlement Agreement." The scheme was to rope in the dissident B minority Common Stockholders in order to compel them to give up their stock for $2,450 per share value instead of $22,500 per share value which is what Class B is worth approximately according to MoPac's Charter or "Agreed System Plan" of Reorganization. I refused "Settlement."

Appellant did move the Court below,by motion dated March 4, 1975,amomg other things,to"modify the the said suit by evaluating classB equity bearing common stock according to the Missouri Pacific Railroad "agreed System Plan" of reorganization by the Interstate Commerce Commission -Finance Docket #9918- - - the"Agreed System Plan" of Reorganization having become a law of the United States by having the Reorganization Plan confirmed and certified both by the Interstate Commerce Commission in Washington,D.C. and by the Federal District Court in Saint Louis in 1954-1955 so tha equivalent values of Class B will be arrived at under the U.S.Constitution;" that"petitioner respectfully requests, in the interests of justice,and on newlyacquired information not made available to the Court prior to this time,showing that the interests of the plaintiff Alleghany as being in direct opposition to those of the petitioner,James C.Gabriel,and the interests of the United States Government- - -. " "The settlement and Recapitalization benefit Alleghany but not the represented Class B stockholders of which petitioner is one.Nor did it benefit the U.S. Government which had

a great stake in the proper evaluation of the Class B under due process of law to find its true higher value so that the United States Government could collect more capital gains taxes from the higher purchase price that Mississippi River Fuel Corp. would have to pay for Alleghany Class B.

Appellant has a transcript of the March 19,1975 hearing before Hon. Edward Weinfeld,District Judge,at 11 A.M. in Room 706,Appearances: Donovan,Leisure,Newton & Irvine,Esqs.,Attorneys for Plaintiffs, By: M.Lauck Walton,Esq.,of Counsel,and James C.Gabriel,Pro Se Intervenor which goes as follows: (See Document or Lot #238 of this record)

Page 2,lines 16-22

Mr.Gabriel:- - - - - - - "I was lobbying in the Senate and House for several years to pass this bill to give the old common recognition. I have been in this case for many years,your Honor,and it insults my intelligence to see the plan of reorganization that was submitted to the ICC in- - - 1954,Finance Docket 9918 was not followed in this plan of recapitalization."

Page 2,lines 23-25.

The Court:"This is water over the dam.You have just handed me a copy of the Second Supplemental Report of the Commission that goes back to 1954."

On Page 3,lines 2-3.

Mr.Gabriel: "This is the plan of reorganization,your Honor.That is where the value of the Class B gets- - "

On page 3,lines 4-5 follows

The Court: "Why go back to 1954 ?Why don't you get down to essentials here?- - -.

This goes to show you that even the Court that approved the "Plan of Recapitalization" of December 18,1972 that gave away over $615 million of Class B equity bearing common stocks values to Mississippi River Corp. and to the rest of the Class A $5 Preferential $100 value stock,did not know of the existence of the MoPac Charter or Plan of Reorganization of MoPac which is the guts of this Missouri Pacific Railroad instant case. Then how does one expect to get any justice,one who owns MoPac Class B?For that reason,this instant case to be resolved properly,must go into the hands of experts,such as the I.C.C. which has the expertise to evaluate the Class B properly,so as to benefit the United States Government Internal Revenue Service by the higher valuation of Class B according to the MoPac Charter,to benefit the IRS over $100 million dollars in taxes,and at the same time avoid the defrauding of the minority and dissident Class B Stockholders,investors in the American free enterprise railroads,who have hit the jackpot.

On page 3,lines 10 to 11,the following:

The Court:What is new in this case? What are the new things before this Court and the ICC?

Mr.Gabriel: The new things in this Court,your Honor,is the fact that they haven't evaluated the B stock under due process of law according to the ICC agreed plan of reorganization of 1954,thereby

shortchanging this B stock of the Mississippi River- - I mean, short-changing Alleghany Corporation $20,000 per share by selling B for $2,450 per share when it has a value of $22,500 per share, which means that by selling 20,000 shares of Class B they have shortchanged the company $400,000,000.

I wouldn't mind if they did that your Honor, if I wasn't involved. But they involved me as a stockholder to give up my stock at the same price that they were forcing Alleghany Corporation to give it up, even though Alleghany had a - - (This was page 3, lines 12-24, Doc. or Lot#23 of the record)

The Court: Did you appear in connection with the proposed settlement that was submitted to me? (Page 4, lines 25,26)

My comment. In all its innocence, the Court was submitted a proposed "settlement" for the Court's approval by the Plaintiffs-Appellees and the Defendants-Appellees, called the "Settlement Agreement" that was made between Alleghany Corporation, the Missouri Pacific Railroad Company and Mississippi River Corporation for the sale of Alleghany's 53% interest in MoPac Class B equity bearing stocks for a value of $2,450 per share. Alleghany had been forced by the I.C.C. to divest themselves of their Class B, perhaps to Mississippi, because Mississippi had previously, in the October 1966 Supreme Court Term tried to defraud the Class B Stockholders out of their very valuable Stock for $100 per share value, which Honorable Supreme Court Justice William O. Douglas called "one of the most notorious pieces of predatory finance I've ever seen." Now that Alleghany was forced to sell their Class B Stock, and at such a low price in order to stay under the jurisdiction of the ICC in the status of a motor carrier, Mississippi and her friends are trying hard to pick up all the rest of the Class B equity bearing Stock at this low low price of $2,450 per Class B by first misleading the Federal Courts, and second by the help and co-operation of I.C.C. Division 3, made up of Commissioners Tuggle, Deason and MacFarland. About the I.C.C., this is what Honorable Justice of the United States Supreme Court Hugo L. Black had to say:

"There are some things that may be so unfair that one might not be willing to trust even the ICC to decide them."

Now that the Class B Stockholders won that 1966 October Term Case in the United States Supreme Court, they are being offered by Mississippi River (Fuel) Corporation not $100 per share value for each Class B, but $2,450 per Class B, even though Class B is worth, according to the MoPac Charter or "Agreed System Plan" of Reorganization, over $22,500 per share. Objectant-Appellant Gabriel voted his Class B MoPac Shares against the "Plan of Recapitalization" under Section 20a in his PROXY on June. 15, 1973 when Class B Stockholders were asked by MoPac to vote for or against the "plan."

Point II -Reply

This Appeal is not "Frivolous" or "Vexatious" It has merit. Evaluation under due process of law of Class A and Class B under MoPac's "Agreed System Plan" of Reorganization will lawfully raise values of Class B and benefit the I.R.S. over $100 million in CAPITAL GAINS TAXES.

This is not yet another appeal, this is not an appeal in regards for Class Action because Appellant Gabriel is appealing from this Class Action of Honorable Weinfeld's Court in respect to a MoPac "Plan of Recapitalization" under Section 20 a of the Interstate Commerce Act which grants AUTHORITY to the Missouri Pacific Railroad Company to issue new shares of stock for the MoPac Class B equity bearing shares, without first evaluating the Class B Common Shares under due process of law according to the Missouri Pacific Railroad Charter or "Agreed System Plan" of Reorganization, of 1954-1955 which would give each Class B over $22,500 per share instead of the $2,450 per share offered by Mississippi River Corporation. Appellant Gabriel is appealing for himself to have his Class B MoPac shares evaluated under MoPac's Charter because he is not bound in the MoPac Class Action in respect to a "Plan of Recapitalization" by Alleghany, MoPac and Mississippi River Corp.

By a proper evaluation by the I.C.C. of Class B Common, it will not only benefit each share of Class B over $20,000 more per share than each Class B is being offered by Mississippi through its "Settlement Agreement" but it will also benefit the U.S. Government Internal Revenue Service because in this higher valuation according to MoPac's Charter, the U.S. Government will become enabled to collect over $100 million in capital gains taxes. Class A $5 Preferential $100 value stock is gaining over $615 million in values from Class B, for which Class B should have received almost ten times more new common shares than Class B is being offered by MoPac, which is under the control of Mississippi River Corp. For this $615 million values that Mississippi River and the rest of Class A is stealing from Class B equity bearing Shares by the helpful hands of Government ICC Agency and the Courts, Class A is not paying not one cent in taxes. It is the Interstate Commerce Commission Division 3, that is headed by Commissioner Mr. Tuggle, that is to blame for this unlawful course of action that is helping defraud the U.S. Government of over $100 million in capital gains taxes, besides defraud-Class B Stockholders out of over $615 million in new securities. The remedy that is now available to straighten things out is to have the experts of the ICC enter this case and evaluate Class B according to MoPac's Charter. Appellant demands his Class B also thus evaluated.

(SEE DOC# 238) Here is more on this in Appellant's March 19, 1975 Transcript on his hearing before Hon. Weinfeld's Court:

(LINES 7-13) Mr. Gabriel: The same day that you had the hearing January 25, 1973 your Honor, I came down and I protested. And I gave an equity studies of the securities and I said that in this particular "Plan of Recapitalization" it will take away 61% of the equity of the B stockholders and give it to the A stockholders, who have no right to it because they - -7-

MR. GABRIEL: I came down here but I wasn't -- I wanted an evaluation of my stock on the --

THE COURT: Why don't you answer my question? Did you participate in the hearing before me when the proposed plan of settlement was submitted?

MR. GABRIEL: The same day that you had the hearing January 25, 1973, your Honor, I came down and I protested. And I gave an equity studies of the securities and I said that in this particular plan of recapitalization it will take away 61 percent of the equity of the B stockholders and give it to the A stockholders, who have no right to it because they --

THE COURT: I referred to that, did I not, in my opinion?

MR. GABRIEL: Yes, your Honor. That was my contention. My contention --

THE COURT: What's new?

MR. GABRIEL: The thing new is this, that they have shortchanged not only the --

THE COURT: That was your argument before.

MR. GABRIEL: No, sir. They have shortchanged the government also for $400,000,000 in values which the government should have gotten at least capital gains tax out of it. We as individual stockholders, we are obliged

fs-appellees and defendants-appellees in opposition to the instant

That was on page 4,lines 7 to 13.

The Court: What's new? (See Document #238,lines 18-25,

Mr.Gabriel: The thing new is this,that they have shortchanged not only the- -

The Court:That was your argument before.

Mr.Gabriel: No Sir.They have shortchanged the government also for $400,000,000 in values which the government should have gotten at least capital gains taxes out of it. We as individual stockholders,we are obligedto give up our stock because Alleghany had self interest to be a motor carrier under the ICC's jurisdiction.

elcq 5

to give up our stock because Allegheny had self interests to be a motor carrier under the Jones Motor Company, sought to get a less taxes on their annual taxes which saved them about 70 percent annually, as a motor carrier under the ICC's jurisdiction.

I don't go along with that, your Honor. It hurts me, your Honor, to see that these things can go on without the advice or the consultation of the minority stockholders whether or not it's agreeable to them. But the thing goes from your hands, your Honor, to the ICC and the ICC, who has the expertise to evaluate the stock under the due process of law, they merely rubber stamp the whole thing and said this is fair.

Why, your Honor, don't they have that plan of reorganization in their hands in which each class B has all the equity of the corporation remaining after the $5 have been paid to the A stock, plus a hundred dollars liquidating value, which amounts to $22,500 a share? They know it. we protest it, but they rubber stamped the whole thing. They had a five day hearing. And your Honor, it makes me feel as if the courts should be told these truths before this thing happened, that was the situation as it was.

The ICC plan of reorganization should be followed to the T, your Honor, in order to get these small stockholders

who have one or two or three or five shares their right proper value, because these people hit the jackpot. There is millions of acres of land in coal, oil, coke, oil shale, gas and all that. The B stock earned last year over $1300 a share, which is a lot of money.

Now, they have got a retained income of 349 million as of December 31, 1972, plus 545 million dollars in property values in land and land values, which have more than doubled and tripled in the last few years, your Honor. And it makes me feel that if Mr. Young was alive, which he isn't, or Mr. Kirby, who had died just a couple of years ago, whenever it was, he would never have accepted this plan. But I was working by lobbying in The House of Representatives and the senate for so many years, your Honor, and it's terrible to see the thing just fall apart just because there aren't people to defend this thing from the people who are trying to take advantage from the time of the sickness of Mr. Kirby, who became ill and died later, or the fact that Mr. Young was another defendant.

Your Honor, there should be a re-evaluation -- I am a pro se stockholder, I should have my stock evaluated. I am not part of this case, the class action. I never came into this class action and I never said I would go along with it. They have no right to rope me in and tell me you have to accept

this. What happens to the property owners in this country if that is the case, your Honor? We have no way of redress, then.

The Court, you yourself, your Honor, should see to it that we as stockholders, which there is only a few remaining, should get their stock evaluated by due process of law according to the re-organization of 1954.

Mr. Young fought for the Plan of Reorganization for years. They spent millions. Why don't they at least follow it now that it is important to be followed? Why should Allegheny Corporation stockholders be shortchanged $400,000,000? That's a lot of money, your Honor. It may not seem so much because they say well, this is a plan of recapitalization, we'll take it. But did they evaluate under due process of law to find exactly what it was worth? They didn't.

Now, there is a reason for it, your Honor because they were in a hurry, maybe financially or otherwise, I don't know what it was. But the ICC told them that if you want to remain as a motor carrier under the ICC's jurisdiction you must divest yourself of your class B stock at our discretion. They have had jurisdiction over their stock for years because of the fact that they had them under the ICC jurisdiction as a motor carrier.

That way they were able to save several million dollars a year in taxes, Allegeny did. But why does that interest us? The fact that they didn't get their evaluation the way they should have gotten it, it becomes our business because we are roped into the same deal and we don't want to be roped into the same deal, your Honor.

We want to have this thing evaluated and done in a proper way. And your Honor knows the method that should be done.

THE COURT: Are you finished?

MR. GABRIEL: Yes, your Honor.

MR. WALTON: Your Honor, I believe that most of the points in opposition are covered in the papers. I'd like to report to your Honor that yesterday the plaintiffs filed a petition for certiorari in the Supreme Court of your last set of denial in the same trial. In addition, your Honor, you denied the plaintiffs motion for new trial and the Napoleon Gabriel's motion for new trial and both of those have been affirmed off the bench by the Second Circuit. They have now taken a potition for certiorari.

I hand you this document. I only received it yesterday.

THE COURT: Who is Napoleon C. Gabriel?

MR. GABRIEL: Your Honor, that is my brother.

He has five shares of Class B. He's had it since 1949 or '52, I don't remember. But I believe that the thing can be corrected by this court right here to evaluate the stock under due process of law.

MR. WALTON: Your Honor, I think you find that the first three questions are identical with the first four questions here. I will just submit, your Honor, that he asserts he owns 120 shares of class B stock, which are worth more than a quarter of a million dollars. He asserts in his position that he owns 120 shares of the old class B which we evaluated in the settlement offer at 22,450 dollars a share, about a quarter of a million dollars in this stock alone. I would respectfully submit that we are never going to see the end of this litigation unless you give the plaintiffs/respondents costs on motions like these.

MR. GABRIEL: Your Honor, everytime we hollered police, they are hurting us, or they are robbing us, we have to pay costs. How can we get help, your Honor --

THE COURT: You haven't paid costs yet, and the defendants have urged that this is really a motion utterly without substance because it's been made before. Apparently as I have read the papers, what you argue here is no different than what has been presented by Napoleon C. Gabriel, who you say is your brother; in that case there was representation

by an attorney. Isn't that correct?

MR. WALTON: That is correct, your Honor.

THE COURT: This matter has been disposed of. I'm not going to listen to the same arguments again and again. You have an avenue of appeal. The matter was heard by the Court of Appeals once, it's been heard by the Court of Appeals twice.

MR. GABRIEL: Your Honor, I am taking this case to Court per se. I want my stock evaluated.

THE COURT: You had a full opportunity to present whatever argument you desired to present to the Court on previous occasions. You were heard, you were present.

MR. GABRIEL: I wasn't part of the case. I realize now that the thing should be started now that the thing should be started from here, from the source, and have it evaluated under due process of law, according to the Missouri-Pacific Agreed Plan of re-organization of 1954, which gives the A stockholders only $100 value, liquidated value plus $5 when and if earned and declared by the directors. And the rest of the property belongs to the B stockholders. That thing has not ever been resolvedyour Honor. We have always been pushed around and I for one have come back to see your Honor, but I want you to look at this thing closely.

THE COURT: You will not come back again except

under different conditions. I am going to deny this motion as frivolous and a rehash of motions that have previously been made, in the Court's view made by this plaintiff appearing pro se who with knowledge of the previous motions. I am going to deny the request made by the defendant, which I regard as a proper one, that costs be imposed, because you are appearing for the first time pro se. But I am giving notice to you now, and notice to any other applicant, that a similar application will be denied because there is no substance to it, and will be denied with the imposition of substantial costs.

MR. GABRIEL: Your Honor, can I have a word with you?

THE COURT: No, we have ended the argument. I gave you the time you wanted. You have a right to appeal from this order.

MR. GABRIEL: Thank you, your Honor.

MR. WALTON: Thank you.

- - -

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Eugene R. Lemp

Official Court Reporter
U. S. District Court

On their appeals from the judgment awarding

Point III - Reply

This MoPac Case is a very serious and important mile stone case, and Appellant must have this Hon.Court have his Class B Common Stock properly evaluated according to MoPac's Charter to correct the manifest injustice done to him by a Class Actio of dividends and conspiracy,and four years later convoluted into a "Plan of Recapitalization" under the same pleadings,as a Class Action,without right of dissident Class B Stockholders to have their shares evaluated under due process of law. This must be done not only for the sake of Appellant's property rights secured by the Constitution and laws of the U.S.,but also for the sake of real justice in the United States Federal Courts,and also for the sake of the U.S.Government Internal Revenue Service that has over $100 million coming to it by the proper evaluation of Class B according to MoPac Charte

1) Alleghany Corp. spent millions of dollars for this MoPac Charter a the time of MoPac's Reorganization (See Documents in this case#233, #245 and #246),that is why the "Agreed System Plan" of Reorganization was formulated at such great expense of time,money and expertise.Charter of MoPac must be followed,especially in a Section 20a of the Interstate Comme rce Act in order to give substance to the action of the ICC in this instant case.The ICC,especially Division 3,led by Commissioner Tuggle, cannot constitutionally give authority for a "Plan of Recapitalization" under 20a based upon a value that the Court below says is "fair value" (See Document #199 in this case;see also ICC Finance Dockat #27346, Service Date December 14,1973,page 58,59,60 and 61.),and the Commission Division 3 follows suit by saying $2,450 is"fair value" based upon Class B Stock's "Settlement Agreement" which the ICC says,on p.58,F.D.27346 ,of December 14,1973 Service date,that the agreement was negotiated at "arms length" and then in the next instance says,as on page 61,that, "we believe that the elimination of Alleghany's ownership in MoPac's stock is a matter that tends to promote the public interest," (See Alleghany Corp.--Control & Purchase--Jones Motor Co.,Inc.,109 M.C.C.333.),when all the time it was the I.C.C. that compelled Alleghany Corp.to divest themselves of their B Class securities in order to allow Alleghany to remain as a motor carrier under ICC jurisdiction so as to save Alleghany from an annual 70% I.R.S. penalty tax (See MC-F-10444,Alleghany Corp.--Control and Purchase--Jones Motor Co.,109 M.C.C.333,pages 339and 350),but this elimination of Alleghan ownership of Class B was against the public interest because Class Action method was used in a "Plan of Recapitalization" by using a Section 20a pr oceedings of the Interstate Commerce Act to compel Class B minority Stockholders to give up their valuable Class B Stock at almost one tenth of Class B's value,which is a corrupt and fraudulent method,and no proper owners are any longer safe in the United States if this corrupt Class Action is allowed to stand by the United States Federal Courts. For shame.

2) And the Court below,under the prodding of M.Lauck Walton, calls

this very important case as fri[illegible] us, that it has no substance to it, that a similar case "will be den[illegible] with the imposition of substantial costs." This is the way the lower Court discourages any Objectant-Appellant from bringing up his case before the U.S.Federal Courts when he knows that he must appeal to the Federal Courts in order to protect his property Civil Rights from Conspirators who are conspiring against Civil Rights or Privileges secured to him by the Constitution or laws of the United States. Crimes and Criminal Procedure, Chapter 13, Civil Rights, Section 241, Title 18. (See page 11 of the Transcript, Document #238 of this case, or pages 13 and 14 of this reply brief).

3) Apparently M.Lauck Walton of Donovan, Leisure, representing Alleghany Corporation, does not want Appellant to fight for his property secured to all by the Constitution or laws of the U.S., so he says on page 9, lines 14-16 of the Transcript of March 19, Document #238. Appellant is hollering police- - "they are robbing us" and we have to pay costs. (Lines 17-19 of same as above, p.9 of Transcript) According to Alleghany Corp, I have no right to complain as an Appellant, of this grand swindle. Why should Alleghany, a $200,000,000 complex, try to fight me for protecting my rights or privileges secured by the Constitition or laws of the U.S.? I am not a part of this Class Action which the "Plan of Recapitalization" of MoPac claims control over. This "Recap Plan" gives all Class A, including Mississippi, through the power and influence of the ICC, help to defraud all Class B equity bearing Stocks by the use of the ICC's so called "plenary power" under its Section 20a of the Interstate Commerce Act. This action by the I.C.C. is not constitutional. It shall be brought before the Courts, to be tested, if this Honorable Court does not object to the ICC's effort to overcome all opposition to its use of its "plenary power" under section 20a of the Interstate Commerce Act. The Division 3 of the Commi[illegible]ion says that the "Commission's jurisdiction under 20a is plenary and exc[illegible]ive and independent of any Federal authority. - - - Since the matter involved in this proceeding comes within the purview of section 20a, our jurisdiction in the proceeding is supreme - - -." By this so called exclusivity of the power of the ICC to do as it pleases, the fact remains that Commission Division 3 not only helps defraud the Class B stockholders out of over $615 million, but it helps defraud the Federal Government's I.R.S. out of more than $100 million in capital gains taxes by not evaluating Class B according to the MoPac Charter of 1954-1955. (See page 64, of F.D.#27346, MoPac Securities Decided Dec.6, 1973, Service Date Dec.14, 1973) The MoPac Charter or "Agreed System Plan" of reorganization is the Constitution of the Missouri Pacific Railroad Company which contains the rights and privileges of Class A and Class B, what values each Class of Stocks has. Not one word has been spoken by Plaintiff-Appellees, or Defendants-Appellees regarding the Charter. Why?

Point IV- Reply

Appellant, Pro Se, not as a Class representative, but as an individual, for his own rights and privileges in regards to his ownership of MoPac Class B equity bearing Common Stock, did, on May 19, 1975, make a Notice of Motion to Re-open the above case in order to protest the payment of attorney fees by MoPac and Mississippi to counsel for Plaintiffs Betty Levin, Robert LeVasseur and Alleghany Corporation, in the sum of $1,750 ,000, plus disbursements of $22,422.06, for a total of $1,772,422.06; and in the amount of $850,000, even though final judgment was still subject to appeal because several MoPac cases were still pending in the Federal Courts. In addition it was the duty of Appellant to help the U.S. Government from being defrauded out of over $100 million in taxes in this "Plan of Recapitalization" plus fighting the Interstate Commerce Commissions' authority to Mopac to issue new securities without first the ICC evaluating Class B Common according to the MoPac's Charter or "Agreed System Plan" of Reorganization of 1954-1955, in order to give Class B it real true value, and at the same time obey the MoPac Charter which is the law of the United States because it was approved and certified both by the ICC and the U.S. District Court in Saint Louis, (See Document #239, #240 and #242) for which reason the U.S. law must be obeyed by the I.C.C. (See 290 ICC, p.492), which made the law or MoPac Charter in 1954-1955. If the ICC had obeyed this U.S. law in the first place, all this confusion would have been eliminated, the IRS would have collected their taxes, and the Class B MoPac Common Stockholders would have gotten paid for their shares at their real and true value, according to the ICC formulated Charter.

These Documents will show that there was good reason why Appellant brought his Motions before the Honorable Court below. These Motions are absolutely not frivolous, they have merit and real substance and should be given undivided attention by the Federal Courts of the United States. A grave injustice has been done both against the U.S. Government IRS which has been defrauded out of over $100 million in capital gains taxes, and the MoPac Class B Common Stockholders, both the ones that were under the control of Alleghany Corporation, and the minority Class B, including the dissident Class B Stockholders. The Interstate Commerce Commission, Division 3, must use Section 20a of the Interstate Commerce Act as passed by Congress, always in the public interest, and the public interest is the public that invests in these railroad stocks or securities. The public interest should be treated with respect by the ICC, and the rules and laws as passed by the I.C.C. should be obeyed even by the ICC, especially Division 3 where ICC Commissioner Mr. Tuggle is in charge. The United States laws must be obeyed by every one, especially by the I.C.C. Section 20a does not give the ICC the right to favor one group against another group, especially in this instant case where the U.S. Gov't. and Class B holders are hurt, in their pockets.

Betty Levin, Allegheny Corporation, and Robert LeVasseur,

Plaintiffs,

v.

Mississippi River Corporation, Missouri Pacific Railroad Company, Robert H. Craft, T.C. Davis and Thomas F. Milbank,

Defendants.

67 Civ. 5095 (EW)

Notice Of Motion To Re-open The Above Case In The United States District Court

Sir:

PLEASE TAKE NOTICE that the undersigned Petitioner James C. Gabriel, appearing Pro Se, will move this Honorable Court at the Court House Foley Square, New York, N.Y. in Room 2204 thereof, on the 3rd day of June, 1975, at 2:15 P.M. o'clock or as soon thereafter as Petitioner, Pro Se, may be heard, before the Honorable Edward Weinfeld, U.S.D.J., for an order (a) to reopen the above captioned case; (b) that Petitioner requests an oral argument to be heard; (c) and for granting such further relief as to this Honorable Court seems just and proper, for reasons set forth in annexed petition.

Yours, etc.,

James C. Gabriel, Pro Se,
Petitioner.

Dated: May 19, 1975
P.O. Box 94
Sea Girt, New Jersey 08750
(201) 899-6200

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Betty Levin, Alleghany Corporation, and Robert LeVasseur,	:	67 Civ.5095 (EW)
Plaintiffs,	:	Affidavit In Support
-against-	:	Of Motion
Mississippi River Corporation, Missouri Pacific Railroad Company, Robert H.Craft, T.C.Davis and Thomas F.Milbank,	:	
Defendants.	:	

State Of New Jersey
County of Monmouth

James C.Gabriel, Pro Se, being duly sworn, deposes and says:

1) That he is the Appellant Pro Se in the above captioned case.

2) That this Honorable Court of Justice in its Order and Final Judgment dated and entered May 2,1973, retained "jurisdiction of all matters respecting the consummation of the settlement of this action pursuant to the Stipulation of Settlement and for the purposes of entertaining applications for attorney's fees and expenses by counsel for Plaintiffs Betty Levin and Robert LeVasseur and by Plaintiff Alleghany Corporation.

3) That annexed hereto and made part of this affidavit are two copies of Satisfaction of Judgment, #74,567, Filed April 18,1975, 1) "in favor of Orans, Elsen & Polstein, a pertnership, and Pomerantz Levy Haudek & Block, a partnership, jointly and not severally, and against Mississippi River Corporation and Missouri Pacific Railroad Company, jointly and not severally, in the sum of $1,750,000.00, plus disbursements of $22,422.08, for a total of $1,772,422.08, which judgment was docketed on July 3,1974 in the office of the Clerk of the Southern District of New York and said judgment has been paid." 2) "in favor of Alleghany Corporation and against Mississippi River Corp. and Missouri Pacific Railroad Company, jointly and not severally, in the amount of $850,000, which judgment was docketed on July 3, 1974 in the office of the Clerk of the Southern District of New York and said judgment has been paid," Filed April 22,1975, U.S.District Court, S.D. of N.Y.

-19- 4) That James C.Gabriel, Appellant Pro Se, found out about -19-

because by the Stipulation of Settlement,and the Opinion and Judgment of Honorable Edward Weinfeld's Court approving the same, such fees were to be settled only "after such final judgment is no longer subject to appeal."

5) That at the time of the "Satisfaction Of Judgment" dated April 17,1975 and April 21,1975,final judgment was still "subject to appeal," a)an appeal -a Petition For A Rehearing Of Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit was pending,and was Received on May 9,1975 by the Office of the Clerk,Supreme Court,U.S.,in the Supreme Court Of The United States,March Term,1975,#74-1171; B) Appellant James C.Gabriel's Case #75-7241 in the United States Court Of Appeals ,Second Circuit,was being appealed; c) three appellants in New Jersey had Civil Actions pending in the United States District Court,District of New Jersey,by William R.Wesson, Pro Se,Plaintiff,Civil Action #74-469; John Charles Vaiani,Pro Se, Plaintiff,Civil Action #74-470;James C.Gabriel.Pro Se,Plaintiff, Civil Action #74-471; vs.United States Of America and Interstate Commerce Commission,Defendants,and Missouri Pacific Railroad Co., Intervening Defendant,who are fighting the Interstate Commerce Commission's Authority granted to Missouri Pacific Railroad Company to issue new Securities under Section 20a,Finance Docket #27346, (because it alsodefrauds U.S. Gov't.-more than $100 million in taxes) Service Date December 14,1973,by Commission Division 3,whereby Commission Division 3 is evading its duty to evaluate Class B equity bearing Common Stock according to the I.C.C. "Agreed System Plan" of Reorganization of MoPac ,Finance Docket #9918,of 1954-55, (Class B undervaluation costing Government over$100 million in taxes) called MoPac's Charter,which gives Class B all residuary values, and all dividends after $5 per Class A Preferential Stock,with only a liquidating value of $100 per share has been satisfied for the Class A;the remainder values accruing to the Class B,which amounted to approximately $22,500 value per Class B as of December 31,1972,

I am protesting payment of these fees to these lawyers for the fact case is still subject to appeal,and secondly they should not get paid for betraying Class B unlawfully,and for only a fraction of Class B's real value.Not $2,450,but $22,500 value per Class B.

Sworn to before me this May 19,1975

James C. Gabriel, Pro Se

Sworn to before me this 19 Day of May 1975

Notary Public, State of N.Y.
No. 24-0302315, qualified
in Kings County, Cert filed
in New York County
Comm. expires March 30, 1977

Point IV -Reply

Appellant must repeat the fact that he is appealing in order to protect his rights or privileges secured to all by the Constitution or laws of the United States, that he is appealing in this instant case not as a representative of a Class of Class B Common equity bearing Stockholders, but that he is appealing for his individual rights, Pro Se, for the sake of protecting his rights or privileges that are inherent in his ownership of the Missouri Pacific Railroad Company Class B common Stock, according to the Constitution or laws of the United States, calling upon the Constitution or laws of the United States to help protect and secure Appellant's rights through the United States Federal Courts.

I beg to differ with my worthy opponents who have great prestige and influence in the world of law and politics. But even so, they need not insult my intelligence by accusing me of having a manifold that is incoherent. It may be that to them that do not wish to hear the truth based upon facts and justice and morality, these truths may seem as incoherences. I may repeat myself in order to stress an important point in this case in order that this important point may not become forgotten or missed. Or is it because the oft repeated truth may hurt those who are not in conformity with it, or those who do not wish to hear of it. To avoid this distressing event, please ride along with the facts and not ride against them so as not to become distressed or annoyed, which in the minds of those so affected may become translated as simple incoherences. Furthermore, you must excuse my not being a worthy scholar of law and politics simply because I did not study in that direction, but instead took another worthy direction which at that time seemed more important to me, because I had to earn a living in this world of conflict and misdirection. But if I had been gifted with great foresight such as you people had been, I may had taken up law in order to defend myself by protecting my rights or privileges secured to all men by the Constitution or laws of the United States. In addition, naive as I was then, I believed that all courts and all lawyers and all functionaries of the government followed and obeyed the Constitution of the U.S. I did not then know that one had to fight for his Constitutional rights every day, every inch of the way. Justice certainly must be blind, deaf and dumb. For that reason, we must by all means teach our children to all take up law inorder to protect themselves from all evil, for the sake of their freedom and a good life under God Our Almighty Creator who created all men equal before Him, and endowed them all with certain unalienable rights of freedom, of life, liberty and the pursuit of happiness, that in order to secure and protect these Divine gifts, governments are instituted among men, deriving their just powers from the consent of the governed. God and Christ is first, and government is man's servant.

On brief of page 2 of my worthy opponents, this is what they have to say about my Brief to them: "This brief is submitted by all plaintiffs-appellees and defendants-appellees in opposition to the instant appeal. The manifold, incoherent, and oft-repeated arguments posed by Mr. Gabriel are wholly without merit; each of these arguments has been previously raised and rejected in prior proceedings in this case before the district court, in this Court, on various petitions for writs of certiorari, on various petitions for rehearing of denials of writs, etc--"

I beg to differ with my worthy opponents, but my arguments are not without merit. Whoever has said this, must be totally either blind, deaf and dumb, or else whoever said this, must be unaware of the true facts in this instant case. Just because that writer is working for a fine and wealthy law firm is no reason why he should take advantage of that nice firm's wealth and prestige by making himself unworthy of the firm that he is working for. You must live up to your firm's position and act and write accordingly. The merits of this case are worthy and have been stressed by me time and time again. Is case without merit? The fact is that the United States Government IRS has been defrauded out of more than $100 million in capital gains taxes, and the Class B MoPac Common holders have been defrauded out of over $615 million values in Retained Income and property values just because the I.C.C. Division 3 illegally and unlawfully transferred these values to the Class A Preferential $5 dividend $100 value stock by favoring the Mississippi River Fuel Corp., and the rest of the Class A stockholders. Why doesn't the Class B have such friends who would favor us with almost two thirds of a billion dollars? It may be that the Class B Stockholders know the wrong people. But don't worry one bit, the United States Government is going to catch up with this situation. This sort of thing cannot go on forever. There is law and justice in the U.S. Courts and their future decisions in my favor shall prove it. I am waiting for Federal Government assistance.

It is our worthy opponents whose case is frivolous. If they can make such a big thing with the very little that they have, how much more they could have done if they had such a case as mine to work on, fighting for law and justice and morality and the Constitution and laws of the United States, fighting for to help the U.S. Government IRS uncover a way to collect capital gains taxes on the over $615 million dollars that the Interstate Commerce Commission Division 3 helped defraud the B Stockholders of the Missouri Pacific Railroad Company by not first evaluating their equity bearing shares under due process of law in accord with the MoPac Charter or MoPac Constitution that was formulated by the I.C.C. and the U.S. Federal District Court in Saint Louis in 1954-1955 (See 290 I.C.C. 477. See also page 492 and 665)

Roping in the Class B minority and majority stockholders seemed to be an easy matter for the ICC to accomplish by saying that $2,450 for each Class B was "fair value" when actually each Class B is valued over $22,500 per share according to the MoPac Charter of 1954-1955, and then using the Section 20a of the Interstate Commerce Act to cover up this huge defrauding of over $615 million which ICC conveniently handed over to their favorites Mississippi and the rest of the Class A, these huge values being composed of Retained Income $349 million and $545 million in non depreciable consolidated properties, including land and land rights, or $894 million total for 39,731 Shares of Class B as of Dec. 31, 1972, giving only a value of $2,450 per Class B, and then covering this all up by saying ICC jurisdiction under 20a is plenary and exclusive and independent of Federal authority, but they forgot to pay taxes on this $615 million theist.

Point V -Reply

My worthy opponents state on top of their page 2 of their brief that"each of these arguments have been raised and rejected in prior proceedings in this case before the district court,in this Court,on various petitions for writs of certiorari,and before the Interstate Commerce Commission("ICC");no new matter was presented to the Court belowor has been presented to this Court.There is simply no basis on which to overturn the decision of the court below

First of all,Appellant's case in the instant action is,I repeat, not in regards to a CLASS ACTION. Appellant's action is not as a representative of a Class of Class B Stockholders.Appellant is appealing this case as an individual Class B Stockholder in order to protect his stock ownership rights or privileges that are inherent in his ownership of the MoPac Class B Common Stock,according to the Constitution or laws of the United States,calling upon the Constitution or laws of the U.S. to help protect and secure appellant's rights through the U.S.Federal Courts.

For that reason,this is not the same case with arguments that have been raised and rejected in prior proceedings in this case,because all those arguments were in relation to a Class Action as a Class of Class B Stockholders who were fighting for themselves and all other Class B Stockholders similarly situated.That,this appellant is not doing.This Appellant is suing his worthy opponents for his very own personal property rights in his MoPac Common Class B equity bearing stocks.

For the above reasons, This case has not been before this Court on several previous occasions as stated below by Plaintiffs-Appellees and Defendants-Appellees.Only Class Action cases have been before this Court,and this is not a Class Action case.

Therefore,the material stated below does not apply to Appellant's case.

"This case has been before this Court on several previous occasions. We refer this Court to the record filed and briefs submitted on appeals bearing the docket numbers 73-1864; 73-1865; 74-2104; 74-2172; 74-2231; and T-3063, for further reference throughout this brief. References to the various motions and appeals are cited to the docket sheet as "Dkt. p. ". In addition, citations to the appendix ("A. "), are to the appendix prepared by appellees on the appeal in 74-2104 and filed with this Court."

Point VI -Reply

The Background of the Litigation of Mopac

1)This action was brought about by Class B Stockholders of MoPac against the Missouri Pacific Railroad Company, Mississippi River Corp. a majority holder of MoPac Class A of 64%, and certain directors as a Class Action seeking increased dividends to Class B Stockholders. Class Action was on dividends and conspiracy only as Ordered by Hon. Frederick vanPelt Bryan on October 9, 1968, with no intervenors permitted after December 20, 1968. (See Document #48 of record on appeal)

2)At no time was relief asked for alleged violations of Section 10(b) of the Securities & Exchange Act of 1934, 15 U.S.C. Section 78j(b), and Rule 10b-5 thereunder, 17C.F.R. Section 240.10b-5. This is all new.

The only base of jurisdiction used by the plaintiffs was that of diversity of citizenship. At no time was jurisdiction founded on Section 27 of the S.E.C.Act of 1934. Defendants are NOW filing [illegible]

Allegheny Corporation came out with an Amended [illegible] Complaint, dated July 14,1972, just a few months before the "Settlement Agreement" and even this Amended Complaint sets forth diversity as the base of jurisdiction (See Document #115 of this record) On page 2 of this Amended Complaint, allegation 3-"Jurisdiction of the Court is based on diversity of citizenship of the original parties. The amount in controversy is in excess of $10,000." Entered on Jul 20 1972 U.S.D.C.

On December 18,1972 the Class Party Plaintiffs entered into a "Settlement Agreement" with the Defendants which provided a complete recapitalization of MoPac. The terms of the Agreement, the value of each Class B was put at $2,450 per Share. No provision was made for dissenters to have a right of evaluation under the "Plan of Recapitalization." So dissenters must sue individually, outside the Class. But Court below Hon. Weinfeld forbids this, FINES.

Therefore, the "Plan of Recapitalization" is based upon a Class Action on a take it or leave it basis as a Class Action of Class B Stockholders. With the ICC Division 3 as a ready tool in regards to the 20a Section of the Interstate Commerce Act, with the ICC'S statement on page 64 of F.Docket #27346, Service Date December 14,1973 in regards to granting Authority to Missouri Pacific Railroad to issue new securities, the Commission states as follows:

"Moreover, the Commission's jurisdiction under 20a is plenary and exclusive and independent of any Federal Authority. - - - - - Since the matter involved in this proceeding comes within the purview of Section 20a, our jurisdiction in the proceeding is supreme . . . ." But ICC should have evaluated Class B.

Therefore Commission Division 3 is the cause of all of this trouble whereby the Mississippi River connivers connive to take over Class B at their price, and to include all Class B Stockholders at this great bargain. How can they lose, the cards are stacked in their favor. But one thing they did not calculate, the IRS taxes that must be paid, that would not be paid on this over $615 million values that the $5 Preference $100 value Stock would steal. Now comes the counterattack.

The plaintiff class was found to be a Rule 23(b)(1) and (b)(2) class by order of the District Court (Va. Pelt Bryan, D.J.) on October 9, 1968. A. 174-178.

B. The Final Judgment and Its Review.

After notice and hearing the settlement was approved by the District Court under Rule 23(e) and 23.1 of the Federal Rules of Civil Procedure in an opinion of Judge Edward Weinfeld of March 19, 1973. Levin v. Mississippi River Corp., supra. Final judgment dismissing the action was entered thereon on May 2, 1973. A. 389-91.

Mr. William R. Wesson, an objecting Class B stockholder, unsuccessfully appealed the judgment approving settlement to this Court, A. 401, unsuccessfully sought certiorari from the Supreme Court, A. 402 and unsuccessfully sought reconsideration of the denial of certiorari. A. 403-19. At the same time Mr. Wesson also appealed, unsuccessfully, the denial of his motion to amend Judge Weinfeld's decision approving the settlement. A. 392-400. In this appeal, Wesson contested the determination of the class, A. 392-400; A. 403-18, and on his appeal from the final judgment Wesson argued that plaintiff Alleghany was not a proper class representative, that the form of settlement embodying a recapitalization of MoPac was improper, that the terms of the settlement were unfair to Class B stockholders and that the Court should adopt Wesson's alternative settlement plan.

The above is from page 4 from the Brief of Appellees William R. Wesson, an objecting Class B stockholder, unsuccessfully made the above appeals as a Class B Stockholder in Missouri Pacific Railroad Company, for himself and all others similarly situated. He brought all of these actions as a Class Representative of all Class B Stockholders. On the other hand, James C. Gabriel is bringing this action for himself alone.

Point VII-Reply

The Final Judgment and its Review." by my opponents Brief on page 5.

C. The Consummation of the Settlement.

The settlement was conditioned on stockholder approval of the recapitalization of MoPac, A. 219, and on ICC approval of the issuance of securities for such recapitalization. A. 219-20. The MoPac recapitalization was overwhelmingly approved by both classes of MoPac's stockholders and the issuance of securities therefor was approved by the ICC after a week-long hearing at which objecting stockholders were heard at length. A. 420-502; Missouri Pacific Railroad Co., Securities F.D. 27346, 347 ICC 377 (Div. 3 1973). Several petitions for reconsideration by objecting stockholders, including that of Mr. James C. Gabriel, the instant appellant, were denied by the ICC, A. 513-14, and the recapitalization and the related tender offer by Mississippi were consummated on January 21, 1974.

James C.Gabriel,the instant appellant,and two other appellants,are now suing the I.C.C.against this "Recapitalization Plan" U.S.District Ct. of N.J.,Civil Action#74-470.Gabriel,Plaintiff,v.U.S.A. &ICC ,Defendants.

Under the aura of the Weinfeld Court below approving the recapitalization,and also due to the fact that nothing was said in the Proxy Statement dated May 8,1973 to"Dear Stockholder" and in the"Notice of Special Meeting of Stockholders June 15,1973,to consider and vote on a proposed Plan of Recapitalization" that Alleghany Corporation had a special selfish interest for selling their 53 per cent majority Class B Shares to Mississippi River Corp. for $2,450 per Share because Alleghany Corp. was under pressure by the Interstate Commerce Commission to sell their Class B securities,but to Mississippi River Corp,if Alleghany wanted to remain as a motor carrier under the jurisdiction of the I.C.C.in order to save themselves from being"subject to a 70-per cent penalty tax" annually by the Internal Revenue Service(See Alleghany Corp. Control and purchase-Jones Motor Co.,Inc.,# MC-F-10444,108 M.C.C.),the Class B Stockholders voted for this "Recapitalization Plan." Stockholders misled.

Minority Class B Stockholders were made to believe by the Opinion of the Court below that Alleghany was their friend.But this was not true.

Point-VIII-Reply
Please bear in mind that Moumousis Case is a Class Action Case.

D. The Post-Final Judgment History of Litigation.

On November 20, 1973 one Michael Moumousis, a Class B stockholder, filed a motion in the District Court to set aside the judgment approving the settlement, alleging newly discovered evidence -- the fact that Alleghany's MoPac stock was in a voting trust supposedly indicating improper representation of the class by Alleghany, a ground already urged upon the ICC and upon the Supreme Court. A. 1-2. Moumousis' motion was denied by Judge Weinfeld

-5-

within hours of oral argument by an order dated December 5, 1973, holding that the motion was in effect one for reargument, the Alleghany voting trust having been disclosed on the settlement hearing and even specifically referred to in the District Court's opinion approving the settlement (59 F.R.D. at 358). A. 64-65.

Moumousis appealed from the order denying his motion. A. 66-67.

Page -6-
From Brief of Appellees

The Motion made by Moumousis on Newly Discovered Evidence was properly made in that the Newly Discovered Evidence was made in December of 1973. It was discovered that Plaintiff-Appellee Alleghany had its Class B MoPac Stock in a Voting Trust under the continuing jurisdiction of the I.C.C. by Order of the I.C.C. in order that Alleghany may remain as a motor carrier under the jurisdiction of the ICC. In a motor carrier status, Alleghany was able to save millions of dollars annually from IRS penalty taxes. This fact was not disclosed.

Alleghany voting trust disclosed by the Court referred to the fact that Alleghany's stock was in a voting Trust under the control of the Franklin Bank of New York. But the Court did not refer to the fact that Alleghany's Class B Shares were to be in trust and to be "continued subject to the continuing jurisdiction of the Commission." The Court below did not refer to this fact on May 2, 1973. (See [illegible]-F-10444, Alleghany Corp., Control & Purchase-Jones Motor Co., 109M.C.C.

It is respectfully submitted that Alleghany should have revealed this control by the ICC to the Court below and to the Class B Stockholders. Alleghany should have obtained permission from the ICC to maintain this MoPac transaction in the first place. But it was the ICC that told Alleghany to sell their Class B, but to Miss. in first place.

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On February 22, 1974 and again on March 26, 1974, one Napoleon C. Gabriel, a brother of the present appellant James C. Gabriel, moved the District Court to modify the judgment approving the settlement, alleging, among other things, that the class determination was improper under the Supreme Court's decision in Zahn v. International Paper Co., 414 U.S. 291 (1973). The alleged improper representation of the class by Alleghany and the alleged impropriety of a recapitalization form of settlement were also raised by this Mr. Gabriel. A. 68-85. This motion was denied by Judge Weinfeld's order dated and entered April 8, 1974. A. 86.

Napoleon Gabriel appealed from the order denying his motion. A. 87-89.

From Brief of Appellees -6-

Please bear in mind that the Napoleon C.Gabriel case is a Class Action case.Napoleon C.Gabriel and Michael Moumousis,as Class B Stockholders in Missouri Pacific Railroad Company,for themselves and all others similarly situated.

Objectant-Appellant James C.Gabriel case is not a Class Action case.

Napoleon C.Gabriel and Michael Moumousis Appellants had relied on Zahn v.International Paper Company,42 U.S.L.W.4087(U.S.Dec.17,1973) affirming the opinion of this Circuit that in a spurious class suit such as in this instant case,wherein jurisdiction is based on diversity of citizenship,each and every member of the class action must have at stake in the controversy the $10,000 jurisdictional amount.In this suit for better dividends,with Moumousis having only 2 shares of Class B and Napoleon C.Gabriel having only 5 shares of Class B,there was no such amount in controversy. They did not meet the jurisdictional requirements.

That is the reason why Moumousis with only 2 Shares of Class B and Napoleon C.Gabriel with only 5 Shares of Class B MoPac Stock moved into this milestone case,because they did not meet the jurisdictional requirements of the $10,000 amount in damages in the Zahn vs.International Paper Company case.

On their appeals from the judgment awarding attorneys' fees, costs were assessed against petitioners Moumousis and Gabriel. Dkt. p. 10. They then moved to reduce these costs by motion dated April 1, 1975. This motion was denied by this Court on or about April 22, 1975. Petitioners next moved the Court to reconsider their motion to reduce costs on May 2, 1975. This too was denied on or about May 15, 1975. A motion for rehearing before a full panel, made on June 20, was denied on July 11, 1975.

This statement is not true. Costs were assessed for Briefs and Appendixes to the loser in U.S.C.A., for Donovan Leisure said Moumousis and Gabriel's Briefs and Appendixes were not in good order. But we were told they wanted to discourage us.

The above is from Brief of Appellees, page 8.

I respectfully request that this Honorable Court of Justice help Appellant James C.Gabriel, Pro Se, punish these "Super Lawyers" and their clients who are using the Federal Courts and Federal Government Agencies to fleece the unwary public out of their property in their Missouri Pacific Railroad Class B Shares amounting to over $615 million, and at the same time fleece the United States Internal Revenue Service out of taxes on these $615 million that they have stolen through a so called "Plan of Recapitalization" which is nothing more than a scheme to get away with this grand heist with the help of the ICC through the help of Section 20a of the Interstate Commerce Act. Please give me your help.

The reason why I make this request is because Missouri Pacific Railroad Company, Mississippi River Corp. and Alleghany Corp. have used their "Super Lawyers" to intimidate these two Objectants-Appellants Michael Moumousis and Napoleon C.Gabriel by imposing heavy costs upon them amounting to $1919.32 for Briefs and Appendixes so as to discourage them from taking their 74-2104 Civil Action case to the United States Supreme Court, with the understanding that if they did not take it to the Supreme Court from the Court of Appeals, their costs of printings would be forgiven. The Printing Costs ware imposed on Michael Moumousis and Napoleon C.Gabriel, Jacob R.Cohen and June Cohen, but the Cohens agreed to drop their case from reaching the U.S.Supreme Court, and they were excused from these costs, but instead the whole $1919.32 costs were imposed upon Michael Moumousis and Napoleon C.Gabriel. This really is clout.

Motions were made to disallow these costs, at least cut them down to a reasonable size, but 3 times the Court rejected the pleas. Finally after threats of arrests, etc., by Super Lawyers Donovan-Leisure, representing Alleghany, the $1919.32 was paid. These 2 Appellants had a perfect right to fight this grand swindle of all times by using the Zahn v. Int'l. Paper Co. case. Please help me fight for my rights.

Pomerantz, Levy, Haudek and Block. We are attorneys for

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

STATEMENT OF COSTS

Taxed in favor of appellee - Alleghany Corp., in

Betty Levin, on behalf of herself and all other holders of the Class B. Common Stock of Missouri Pacific Railroad Company & Robert Levasseur,
Plaintiff-Appellee,
v.
Mississippi River Corporation, Missouri Pacific Railroad Company, et al.,
Defendants
Michael Moumousis, Napoleon C. Gabriel, et al., Defendants-Appellants.

No. 402-3, 421

September Term, 19 74,

~~Docketing fee~~	~~$ 50.00~~
Cost of Printing Appendix	$ 1820.88
Cost of Printing Brief	98.44
Taxed at the sum of	1919.32

A. Daniel Fusaro,
Clerk

By Vincent A Castro
Chief Deputy Clerk

-30431-

Plaintiffs-Appellees,

v.

Mississippi River Corporation, Missouri Pacific Railroad Company, Robert H. Craft, T.C. Davis and Thomas Millbank,

Defendants-Appellees,

Michael Moumousis and Napoleon C. Gabriel, Jacob R. Cohen and June Cohen,

Objectants-Appellants.

Costs Of Alleghany Corporation Of Printing Appendix And Brief Totaling $1919.32 Because Alleghany Is Imposing These Heavy Costs on Objectants-Appellants In Order To Punish Us For Having Taken The Case To The United States Supreme Court And For Having Dared To Fight For Our Rights Secured To All Citizens By The Constitution Or Laws Of The United States

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Michael Moumousis, Pro Se, Objectant-Appellant, the undersigned will move this Honorable Court Of Justice at the Court House, Foley Square, New York, New York, for reconsideration by the entire panel of Honorable Justices Friendly, Timbers and Gurfein of their orders with the view of entirely disallowing costs of giant Alleghany Corporation worth over $200,000,000 because Alleghany Corporation is trying to punish us for having dared to fight against conspirators who are conspiring against rights of citizens secured to them by the Constitution or laws of the United States.

Not only that, but my contention is that by having the Federal Courts decide that the Missouri Pacific Railroad Class B Stock be evaluated under due process of law according to MoPac's Charter or "Agreed System Plan" of Reorganization by the Interstate Commerce Commission and the United States Federal District Court of Saint Louis, in 1954-1955, which is now a LAW OF THE UNITED STATES, it would net the United States Government over $100,000,000 in Federal Income Taxes, that the United States Government did not collect.

For that reason, it is imperative that the Federal Courts look into this matter very closely and very seriously. It is the opportunity of the United States Government to do some very serious homework here.

Yours, etc.,

DATED: County of Monmouth
State of New Jersey
July 26, 1975

Michael Moumousis, Pro Se

Address: c/o Pine Belt Chevrolet
1088 State Highway #88
Lakewood, N.J. 08701
201-363-2000

Petitioner
Objectant-Appellant

1 rk 10

proper order. If Alleghany Corporation wanted to place their own Briefs and Appendixes in the case, that was their own business. But to bill the costs, new printings, to the Objectants-Appellants of almost $2,000 after what Alleghany Corp. did to the minority Class B Stockholders by selling them all down the river by forcing them to give up their very valuable Stock worth over $22,500 for $2,450 per share, and thereby get defrauded out of over $20,000 per Share, without the right to an evaluation under due process of law according to MoPac's Charter or "Agreed System Plan" of Reorganization, which is a law of the United States, is outright thievery, and the U.S. Federal Courts should go after them if there is any justice or if the U.S. Constitution still functions as it should be functioning. Alleghany's attitude and demands is adding insult to injury. I shall take this Bill of Costs to the U.S. Supreme Court if I have to, that is the way I feel against such an injustice. Because Alleghany can hire "Super Lawyers" like Donovan & Leisure is no reason why we small people should be pushed around even though the Constitution of the U.S. is on our side. The U.S. Congress should start an investigation into this whole Missouri Pacific R.R. case. Alleghany Corp. and Donovan and Leisure are using the U.S. Federal Courts and U.S. Government agencies such as the ICC and the SEC to get what is not theirs. To treat 2 small Class B equity bearing Stockholders, of 2 and 5 shares, this way while defending their civil property rights secured to all citizens by the Constitution or laws of the United States is against the Civil Rights Act, Title 18, Section 241, Chapter 13, because it is an outright conspiracy against my civil rights and I shall see to it that the Civil Rights Act is enforced by the proper authorities. We are helping all property owners secure their Civil Rights.

We are helping all property owners, because what had started as a Class Action in respect to dividends and conspiracy by Hon. F. Van Pelt Bryan in 1968, Oct. 9, with no intervenors permitted after Dec. 20, 1968, was convoluted 4 years later into a Plan of Recapitalization, all the minority Class B Stockholders being corralled into a box canyon and made to give up their stocks Class B without evaluation under due process of law. Class B is worth over $22,500 per Share, but the Preferred Class A worth only $100 per Share, is buying up Class B with Class B money, paying only a value of $2,450 per share, & keeping for the Class A the difference, or over $20,000 per share, or over $615 million that belongs to Class B, and for which $615 million they steal they paid no taxes to the I.R.S. Mississippi is using the U.S. Federal Courts and the Gov't. agencies to put over this fraud.

We two Objectants-Appellants are doing a public service for the public interest. The U.S. Courts and Congress shall acknowledge this in due time. Help us help the U.S. Government enforce the MoPac Charter so that the U.S. Government can collect over $100 million in taxes.

Therefore we pray that your Hon. Sirs vacate the Bill of Costs of Alleghany Corp. against Objectants-Appellants Moumousis and Gabriel.

Address: c/o Pine Belt Chevrolet
1088 State Highway #88
Lakewood, N.J. 08701
201-363-2900

Respectfully Submitted,
Michael Moumousis, Pro Se
Objectant, Appellant,
Petitioner

State of New Jersey, Ocean County
July 28, 1975

Sworn before me this date:

Mary Ellen [illegible] 7/28/75
Notary Public, State of New Jersey
My Commission expires 3/14/78

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

BETTY LEVIN, et al,

Plaintiffs,

v

MISSISSIPPI RIVER CORP, et al,

Defendants.

67 Civ. 5095

New York, New York
July 29, 1975
2:15 p.m.

Before

HON. EDWARD WEINFELD, D.J.

Appearances

JAMES GABRIEL, Pro Se

STEPHEN HOUCK, ESQ.
Attorney for Alleghany Corporation, Judgment-Creditor

me

THE COURT: What is your name?

MR. GABRIEL: James C. Gabriel. May I talk for my brother, your Honor? They are family people and they don't have no --

THE COURT: Who is Napoleon Gabriel?

MR. HOUCK: It's his brother. He has appeared in this court. Mr. Gabriel and Mr. Moumousis have been represented in this court. He was in here last time.

THE COURT: I will not hear you if you are not an attorney.

MR. GABRIEL: I came down to file this motion.

THE COURT: I understand you have. There is no stay granted. You could have applied to the Court of Appeals and obtained a stay.

MR. GABRIEL: We don't know how to do it. We are doing it on a pro se basis. We are trying to fight for our five and two shares of stock.

THE COURT: You said that before. I heard you originally. I direct these two men to appear for the taking of their deposition.

MR. GABRIEL: They sent me down with the motion to the Court of Appeals because they told me we could make the motion.

THE COURT: If you want to file it, I will

me 3

consider it.

MR. GABRIEL: We filed it.

THE COURT: I understand you did.

MR. GABRIEL: I am sorry, sir. We told them we would take them to the Supreme Court and they said that's what we should do. We're only small people. We've got to help each other.

MR. HOUCK: It's only been before the Second Circuit three times.

THE COURT: Motion is granted. You may submit an order punishing defendants for contempt for failure to appear. They may purge themselves of the contempt upon condition that they appear for the examination as originally scheduled on Friday at 10:00 a.m. in Room 601 of this court house. If they appear at that time they will be purged of contempt; if they fail to appear then the contempt order will be enforced.

MR. HOUCK: Thank you, your Honor.

MR. GABRIEL: Your Honor, isn't there some way we can be helped? We don't know anything of these things.

THE COURT: You are not a lawyer and I won't hear you. The matter is disposed of. Tell both of them to appear on Friday morning, ten o'clock. If they don't appear, a contempt order will be issued against them. Room 601 of this court house. That is the third time they have been ordered to appear, and they will go to jail if they don't appear.

Point X -Reply

The following is from Appellees Brief, page 8

On March 19, 1975, the motion to set aside the judgment which is the subject of the instant appeal was made. Judge Weinfeld denied this motion stating:

> "I am going to deny the request made by the defendant [plaintiff-appellee Alleghany Corporation], which I regard as a proper one, that costs be imposed, because you are appearing for the first time pro se. But I am giving notice to you now, and notice to any other applicant, that a similar application will be denied because there is no substance to it, and will be denied with the imposition of substantial costs." (Transcript of Hearing of March 19, 1975, p. 11).

Undaunted, Gabriel filed the instant appeal. Dkt. p. 10. As noted above, Mr. Gabriel has since brought yet another unsuccessful motion to reopen the judgment, and costs were imposed. Dkt. p. 11. -8-

Please see pages 3B-14 for the March 19,1975 hearing before Hon.Weinfeld's Court,with Transcript. Among other things,Motion was based upon to have Class B evaluated according to the ICC MoPac Charter of 1954-1955,so as to also help Gov't.collect taxes due to Gov't on these higher values.

Appellant,James C.Gabriel,makes a Motion to re-open the 67 Civ.5095 (WW) case, Motion made on May 19,1975. in order to protest payment of lawyers fees amounting to $2,622,422.06 because at the time of "Satisfaction of Judgment" final judgment was still subject to appeal.This was against Stipulation of Settlement" and the Opinion and Judgment of Hon.Ed. Weinfeld's Court approving the same,such fees were to be settled only "after such final judgment is no longer subject to appeal." There were still 3 cases pending in New Jersey: Appellant James C.Gabriel's Case "74-471;John Charles Vaiani's Case #74-470;William R.Wesson,Case #74-469;vs,United States Of America and Interstate Commerce Commission, Defendants,and Missouri Pacific Railroad Company,Intervening Defendant.

A Rehearing of a Writ of Certiorari to the United States Court of Appeals for the Second Circuit was pending,and was received by the Office of the Clerk,Supreme Court of the United States,March Term,1975, #74-1171 on May 9,1975.

Appellant James C.Gabriel's Case $75-7241 in the United States Court of Appeals,Second Circuit,was being appealed.

Unless the Interstate Commerce Commission evaluates the Class B by using the MoPac Charter of 1954-1955,the U.S.Government I.R.S. stands to be defrauded out of over $100 million in capital gains taxes.

Plaintiffs Resposnents,

-against-

Mississippi River Corporation, Missouri Pacific Railroad Company, Robert H Craft, T.C.Davis and Thomas F.Milbank,

Defendants-Respondents.

James C.Gabriel, Pro Se,

Petitioner.

67 Civ.5095 (EW)

Affidavit in Opposition To Affidavit Of Marcia B.Paul of Sullivan & Cromwell. This Captioned Case is being Re-opened Primarily to Aid The U.S.Government Internal Revenue Service From Being Defrauded Out Of Over $100 Million In Taxes.

State Of New Jersey)
:ss.:
County Of Monmouth)

James C.Gabriel, being duly sworn, deposes and says:

I am the Petitioner in the above captioned case.

I submit this affidavit in opposition to the affidavit of Marcia B.Paul, dated May 29,1975, a member of the Bar of this Court, associated with the firm of Sullivan & Cromwell, attorneys for the defendants Missouri Pacific Railroad Company, (MoPac), Robert H.Craft and T.C.Davis in the above captioned case.

The motion of petitioner James C.Gabriel, dated May 19,1975, for an order "reopening" this case, petitioner's request for an oral arguvent to be heard, and for granting such further relief as to this Honorable Court seems just and proper, for reasons set forth in the annexed petition.

In the annexed petition it was stated that this Honorable Court of Justice in its Order and Final judgment dated and entered May 2,1973 retained "jurisdiction of all matters respecting the consummation of the settlement of this action pursuant to the Stipulation of Settlement and for the purposes for entertaining applications for attorney's fees and expenses by counsel for plaintiffs Betty Levin and Robert LeVasseur and by plaintiff Alleghany Corporation."

That two copies of Satisfaction of Judgment were filed, #74,587, Filed April 18,1975 "in favor of Orans, Elsen & Polstein,

P.38A

Southern District Of New York

S. D. Of N. Y.

Betty Levin, Allegheny Corporation, and Robert LeVasseur, Plaintiffs-Respondents, -against- Mississippi River Corporation, Missouri Pacific Railroad Company, Robert H. Craft, T.C. Davis and Thomas F. Milbank, Defendants-Respondents, James C. Gabriel, Pro Se, Petitioner.	67 Civ. 5095 (EW) Affidavit In Opposition To Affidavit Of Roger W. Haudek, associated with Pomerantz Levy Haudek & Block, the attorneys for plaintiff Robert LeVasseur. This Captioned Case is to Be Re-Opened Primarily to Aid The U.S. Government Internal Revenue Service From Being Defrauded Out Of Over $100 Million in Taxes.

State Of New Jersey)
County Of Monmouth) ss.:

James C. Gabriel, Pro Se, Petitioner, deposes and says, under pe

1. I am the Petitioner in the above captioned case. I submit this affidavit in opposition of the affidavit of Roger W. Haudek, associated with Pomerantz Levy Haudek & Block, the attorneys for plaintiff Robert LeVasseur, who is opposed to my re-opening the above captioned case on the ground that plaintiffs' counsel fees have been paid although the settlement, according to me the Petitioner, Pro Se, is still subject to appeal. The settlement is still subject to appeal, and it is at the present moment being 1) appealed by James C. Gabriel, Pro Se, Petitioner, in the United State Court of Appeals, Second Circuit, Case #75-7241; at the present 2) moment is being appealed by Michael Moumousis and Napoleon C. Gabriel, as Class B Stockholders in Missouri Pacific Railroad Company, for themselves and all others similarly situated in a Petition for a Rehearing of Petition for a Writ of Certiorari to the United States Court of Appeals, for the Second Circuit, Received on May 9, 1975, Office of the Clerk, Case #74-1171, Supreme Court of the United States, March Term; 3) three appellants in N.J. have Civil Actions pending in the United States District Court, District of New Jersey, by a) William R. Wesson, Pro Se, Plaintiff, Civil Action #74-469; b) John Charles Vaiani, Pro Se, Plaintiff, Civ

R38B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

BETTY LEVIN, et al., :

Plaintiffs, :

vs. : 67 Civ. 5095

MISSISSIPPI RIVER CORP., et al., :

Defendants. :

----------x

June 3, 1975
2:15 p.m.

BEFORE: HON. EDWARD WEINFELD, USDJ

APPEARANCES:

JAMES C. GABRIEL,
Pro Se Plaintiff

For Defendants:

SULLIVAN & CROMWELL, ESQS.
BY: Marcia B. Paul, Esq.

POMERANTZ, LEVY, HAUDEK & BLOCK, ESQS.
BY: Robert W. Haudek, Esq.

DONOVAN LEISURE NEWTON & IRVINE, ESQS.
BY: Steven Houck, Esq.

See Exhibit in Index to my Appendix to my U.S.C.A. Brief, Item 7 with Judgment of Hon. Weinfeld of June 3, 1975.

Transcript of the above Motion To Re-open Case #67 Civ. 5095 Hon. Judge E. Weinfeld in the U.S. District Court Dated May 19, 1975 in order to protest payment of lawyers fees while Case is still subject to appeal, and it is still subject to appeal; that the ICC should evaluate Class B equity bearing Common Stock according to the ICC "Agreed System Plan" of Reorganization or Charter of 1954-1955 that was confirmed and certified both by the ICC and the U.S. Federal District Court in Saint Louis, making the Charter a law of the U.S.; that if the Class B is not evaluated under its Charter by the I.C.C. it will help defraud the U.S. Government out of more than $100 million in capital gains taxes.

THE COURT: You may proceed.

MR. GABRIEL: By not evaluating out stock under due process of law, the government is the loser of over one hundred million dollars in taxes. In other words, whether you like it or not, the United States Federal courts and the ICC by not consenting to evaluate --

THE COURT: What are you reading from?

MR. GABRIEL: My text that I made up. I was up all night long trying to get these papers together and I am tired. I haven't slept over an hour.

The United States Federal courts and the ICC by not consenting to evaluate Class B under due process of law are helping to defraud the United States Government Internal Revenue Service of over one hundred million dollars in taxes. Therefore, without an evaluation of Class B under due process of law, the plan of recapitalization of 1973 coupled with the Section 20A of the ICC becomes a vehicle that helps defraud the United States Government of many millions dollars of taxes. The only solution to this problem is to evaluate Class B under due process of law; Mopac system plan of reorganization of 1954, finance docket 9918.

It seems to me that we have gone through the thing quite a bit. The idea of the government being defrauded

was never brought up. I think the government has a right to claim its taxes on the evaluation which was never consummated. Our contention was always that we should have the stock evaluated under due process of law, the agreed plan of reorganization, and we have no response. We tried again and again in different direction but we have no response. We love your people, we think you are wonderful, but evaluate our stock and say this is what it is worth under the agreed plan of the ICC that was formulated in 1954.

We have no fight against you people. All we have been doing all these two years is evaluating. We have never got a positive response either from the courts, the supreme court or the ICC or anybody. Now that they realize the government is also being defrauded out of millions of dollars, it seems to worry them a bit.

It doesn't worry them at all when we are losing it. Of course it doesn't because we are only stockholders, but what about the government that has a claim on this, and, furthermore, the time we had the hearing in Washington on September 17 to 21, 1973, Mr. Vaiani who questioned Mr. O'Leary, the vice president of finance of how is it possible that they could not pay over five dollars a share in dividends on the B stock but now with this plan, they could pay $850 a share. So, Mr. O'Leary said we are borrowing the money,

straighten this matter out, I believe we will be on a very amicable basis among the people who have been the defendants and plaintiffs in this case.

THE COURT: Have you concluded?

MR. GABRIEL: It is the same old story. You can conclude it in two paragraphs:

We want an evaluation under due process of alw according to the FCC plan of reorganization of 1954 which gave the preferred stockholders only one hundred dollars value and five dollars when and if declared and gave the common stockholders, the B stockholders the equity of the corporation which amounts to over $22,500 a share which is made up of three hundred forty-nine million in retained income and five hundred forty-five million dollars in property values and those property values could be four and five times more but I will be conservative and forget about the difference. We have a value of eight hundred ninety-four million dollars and divided by 39,731 shares, we have a value of $22,500. That means 225 shares of new stock for every B stock in relation to $100 of the preferred which is one share.

We should get 225 hsares against their one but instead, what are they giving us? They are giving us $850 a share in cash and $15 a share in relation to $22,500. That is a pretty big windfall. The government should

government participating and collecting those taxes and it is our money they are taking away without compensation to the B stockholders. That is what worries me.

We can get this thing straightened out under the agreed system plan of reorganization and we could terminate that way.

THE COURT: Who is in opposition to this motion?

MISS PAUL: Marcia Paul of Sullivan,Cromwell. I speak on behalf of all plaintiff-respondents and defendant-respondents.

We agree with your Honor's statement and find there is absolutely nothing raised upon this motion by Mr. Gabriel that has not been raised numerous times before. There is no merit to any of the argument.

A certain amount of finality should be afforded a judgment which has been before this Court over and over again and before other courts and we feel something should be done to stop the stream of motions to reopen, vacate or modify the judgment in one form or another.

THE COURT: What do you think should be done to stop the stream of motions?

MISS PAUL: We propose or suggest to your Honor that perhaps you could order that each additional motion which is submitted to this court be treated as one for

Att'ys' fees were paid prematurel not accord ing to "Se tlement Agreement.

Motion wa in regard to fees,a that the U.S.Gov't. I.R.S. wa being defrauded out of ov $100Milli in capita gains tax by not having Class B Common evaluated under due process o law accor ing to th MoPac Charter o 1954-1955 which is a law of the U.S. The U.S.Gov't I.R.S. being defrauded was never brought before. M ion has merit.

Pomerantz, Levy, Haudek and Block. We are attorneys for LeVasseur.

Our position here is to request attorneys fees assessed against the petitioner for his frivolous motion and we hope this way he will be discouraged.

THE COURT: What attorneys fees do you think will be reasonable?

MR. HAUDEK: We have asked for $200 for this particular motion.

MR. HOUCK: My name is Steven D. Houck from Donovan, Leisure, Newton & Irvine, for Alleghany.

I would aslo request costs. On Mr. Gabriel's last motion, I believe your Honor told him if he appeared again before you you would assess him substantial costs.

THE COURT: Did you file opposing affidavits?

MR. HOUCK: We didn't on this motion.

THE COURT: Then all you are asking for is your reasonable fees for appearance here today. You haven't drafted any papers, have you?

MR. HOUCK: Miss Paul submitted papers on our behalf.

THE COURT: Where are they?

MISS PAUL: There is a statement in my affidavit to the extent that I am submitting the papers on behalf of

Exposing the defraud- of the U.S. Gov't. IRS out of over $100 million in taxes is not frivol- ous.

Exposing payment of Att'ys' fees prematurely, and against their own "Settlement Agreement" is not frivolous. Why should Appellant be assessed Att'ys' fees?

My Motion has merit.

all parties.

MR. GABRIEL: How could this be a frivolous case when there are hundreds of millions of dollars involved? We will never give up on this case until there is a resolution The only way they could stop us is to put us in a concentratio camp. We are not going to stop fighting for our equity becaus we haven't had a chance to show what it was worth.

You people should have at least the courage to say it should be evaluated. Why are you fighting us, putting costs on us? It is enough I am spending day and night trying to answer your affidavits and everything and wearing myself down. Why don't you people come out and try to settle this matter?

THE COURT: They are not going to settle it. You have your day in Court and you have made your statement. The fact you have made it doesn't mean that the Court has to agree with it.

I am satisfied this is a frivolous motion.

MR. GABRIEL: Why? The government has been defrauded out of one-hundred million dollars. Is that a frivolous motion, when the government has not gotten its taxes on this? That is not frivolous. It was a big case.

THE COURT: It was a big case when I had it and whether it is a big case or a small case, doesn't make th

slightest bit of difference. It is entitled to the same attention from the Court and it received the attention it required. We are not going to argue any further. I have heard enough on this motion unless you have something you want to add that is different from what you said before.

MR. GABRIEL: If you evaluate the right way, you will get the government to come in and get their taxes but you are not evaluating, your Honor, you are giving us --

THE COURT: That was fully gone into on the original motion with some stockholders claiming the shares were worth $25,000.

MR. GABRIEL: We are not claiming that. We have given you facts. We got three hundred forty-nine million in retained income and five hundred million dollars in property value which are worth five, six times more than that. The ICC has the expertise --

THE COURT: You go down to the ICC if you think you are entitled to any more.

MR. GABRIEL: Our case is still pending. We are fighting them on their plan of recapitalization. We haven't stopped yet. We are still out in Jersey. They had no right to give a consent on that amount -- they were remiss in their duties. They should have gone and evaluated it. Why didn't they do it? Alleghany Corporation had other

interests. They didn't want an evaluation and in the meantime, we are stockholders losing almost 90 percent of our equity. That is not right and these people ask to have you put cost on me. Why, because I am fighting for my rights secured by the constitution?

THE COURT: You asked for ten minutes. I asked you if you had anything new to add and you are just repeating your self. You had more than your ten minutes.

This is a motion made by the petitioner James C. Gabriel appearing pro se. The motion is denied.

In view of the past history fo motions to reopen this matter which were without substance, the Court is of the view the motion is vexatious and an abuse of process. The movent is directed to pay $100 reasonable counsel fees to those opposing the motion to be divided equally among them.

* * *

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

Not only is Appellant fighting for his rights secured by the Constitution or laws of the U.S., but he is also fighting to have the MoPac Charter enforced, which is a law of the U.S. so as to save the U.S. Gov't. millions of dollars in uncollected taxes, but also save B Stockholders their property according to the U.S. Constitution and laws of the U.S, in addition saving the good name of of our Federal Courts that have been misled in this instant milestone case.

To Repeat- Appellant is not fighting as a Class Representative of all those similarly situated. He is fighting for his own rights.

To Repeat:

Point XI -Reply

Appellant is suing for his own property Class B and not for others similarly situated. This is not a Class Action suit. The William R.Wesson and Michael Moumousis et al suits were Class Action suit,for themselves and others similarly situated.

Set forth below is a list of each "issue" raised by Mr. Gabriel as we discern them:

From Appellees' Brief P.10-

-- Alleghany's interest differed with that of the other members of the class.	
-- The settlement defrauded the government of taxes.	The "Settlement" by not evaluating Class B according to Charter.
-- A conspiracy existed between the appellees, the federal courts, and the ICC to defraud the U.S. government of its rightful taxes.	No conspiracy existed between them,but the "Settlement Agreement" "Recapitalization" not based upon Charter defrauds IRS & Class B.
-- The former Class B stock of MoPac was not evaluated under due process of law.	Class B should be evaluated according to MoPac Charter.
-- The settlement was in contravention to the 1954 Agreed System Plan.	The "Settlement" must include Charter evaluation.
-- The ICC evaded its duty under the MoPac charter.	The ICC should evaluate Class B by using Charter.
-- Jurisdiction of the District Court was based only on diversity of citizenship.	Correct.
-- The class was improper under the Supreme Court decision in Zahn v. International Paper, 414 U.S. 291 (1973).	That is correct.
-- The settlement was unfair to the Class B stockholders.	Unfair because Charter was not used to evaluate Class B.
-- Appellee Robert LeVasseur had a conflict of interest as the owner of both Class A and Class B shares.	
-- The proxy statement seeking stockholder approval of the capitalization was inadequate with regard to income tax consequences.	

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Point -Reply

To repeat, Appellant does not represent a Class of Class B Stockholders similarly situated. He is fighting for his own prope rights in his Class B stock, in N.Y., this conflict source.

From Brief of Appellees- - -

-- Attorneys' fees were improperly paid since the judgment was still subject to appeal. Correct.

-- Attorneys' fees were paid in part for services rendered in a different case. Correct.

-- The settlement was not within the framework of the pleadings. Correct.

None of these issues constitute "newly discovered evidence". Each of these issues has been profferred to the courts and to the ICC in substantially the same form and has been considered and rejected.

On the initial appeal from the judgment approving the settlement of this action and on the settlement hearing itself, each and every one of these issues was raised (other than those concerning attorney's fees) and resolved, supra. In addition, as discussed above, the Moumousis motion to set aside the judgment raised the issue of the propriety of Alleghany as one of the representatives of the class. The similar motion by Napoleon Gabriel was on the grounds that Zahn v. International Paper should be applied, depriving the court of jurisdiction, and that the settlement went beyond the framework of the pleadings. The fairness of the settlement was also raised before the ICC. The scope of the settlement was similarly challenged in Wesson's petition for certiorari, in his petition for a rehearing of the Supreme Court's denial of certiorari, before the

These issues have not yet been reviewed by the U.S. Supreme Court. That Court has been too bu The fact th the Court h not yet reviewed them doesn' mean that they are lost.

The issue of the IRS being defrauded out of over $100 millio in taxes; th issue of th fact that Att'ys' fe have been paid when they shoul not have been paid until all chances of appeals we over are new eviden Furthermor my case is not Class Action cas

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ICC, on petitions for reconsideration before the ICC, and before the District Court in Missouri. The jurisdiction of the District Court and the applicability of Zahn were raised on the Wesson petition for rehearing of the denial of certiorari and on the ICC rehearing petitions.

It is apparent that the appellant has introduced no "newly discovered evidence", nor has he raised a new argument in support of his motion. Not only could these arguments have been raised earlier, they indeed were. The prior decisions cited above are clearly res judicata in the instant case. A final judgment, affirmed on appeal, has conclusive effect and is res judicata on any grounds which were raised or might have been raised before the Appellate Court. Sunshine Coal Co. v. Adkins, 310 U.S. 381, 402-03 (1940); Miller v. National City Bank, 166 F.2d 723, 726 (2d Cir. 1948); 1B Moore's Federal Practice ¶ 0.405, at 624 and cases cited therein.

Petitioner was somewhat more focused in the motion papers he submitted to the court below on the motion from the denial of which he now appeals. There he argued that satisfactions of judgment filed as a result of payments made to the attorneys for plaintiffs pursuant to order of the District Court dated July 3, 1974, were premature in that this order was as yet subject to appeal.

There is no merit whatsoever to this argument.

The challenge against the I.C.C. Granting Authority to MoPac without proper evaluation of [illegible] Class A, and the [illegible] equity bearing Common under MoPac's Charter before new securities being issued by MoPac is still not decided in the New Jersey Federal District Courts.

If these "Super Lawyers" think that they can take over Stockholders property rights without first paying for their Class B according to the MoPac Charter, they have another guess coming. The MoPac Charter is United States law, and it must be followed both by the ICC and the U.S. Courts. This has not yet been done.

I repeat, prior cases were Class Action cases, and this instant case is not a Class Action suit. Appellant is fighting for his property rights secured by U.S. Constitution.

The record clearly demonstrates that a substantial and unnecessary burden has been placed upon the courts in this action by petitioner Gabriel, his brother Napoleon, and others. Mr. Gabriel's assertion that his latest contentions represent "newly discovered" evidence is flagrantly contradicted by the record and is clearly frivolous. Although Mr. Gabriel appears pro se, it is difficult to believe that he is not fully aware of that fact. He attended the original settlement hearings, actively participated in the ICC hearings, attended the oral argument of the appeals from the District Court's original order

The record clearly demonstrates that substantial unnecessary burden has been placed upon the courts in all of these actions by the Plaintiffs-Appellees and Defendants-Appellees by not having first evaluated both Class A and the Class B according to MoPac's Charter in their "Plan of Recapitalization" under Section 20a of the Interstate Commerce Act as passed by Congress in 1940, if they had planned to rope into the "Recapitalization Plan" the minority and the dissident Class B Stockholders. By roping into this "Recapitalization Plan" the minority and dissident Class B Stockholders, and at the same time not evaluating Class B under the MoPac Charter, the "Recapitalization Plan" is not any longer a "private party". It is public.

Furthermore, it was not the intent of Congress that by passing Sect. 20a it would become an instrumentality in the hands of an unthinking Interstate Commerce Commission to having it help to defraud not only the Stockholders of a very solvent and prosperous railroad out of over $615 million dollars in values, but to also to become an instrumentality into helping defraud the U.S. Government Internal Revenue Service out of over $100 million in capital gains taxes.

And what is the response of my worthy opponents, made up of five of the largest firms of great prestige, to all of my contentions in this regard? That it is "clearly frivolous." I don't believe that it takes much intelligence to make such a remark that it is "clearly frivolous." Or perhaps this is the only defense that they have. They have none, that may carry them through. Any old straw will do if nothing else is there to help them in a weak case that they cannot defend. But how can they fight the truth? Their case is congenitally wrong because it is not based upon facts, it is not based upon the law of the MoPac Charter which gives Class A $5 per year and $100 per Share Liquidation, and the Class B all of the remainder or residuary values, which amounts to $22,500 or more per Class B. To verify these claims, please read 290 ICC, 477, p. 492 and page 485. This is part of the MoPac Charter.

as well as the hearing on the appeals of the orders denying the Moumouis and Napoleon Gabriel petitions; he must know, therefore, that the matters he seeks to raise have been thoroughly thrashed out in the District Court and before this Court. Given this background, it is hard to postulate a purpose Mr. Gabriel might have, beyond that of simple harassment.

The parties and their counsel are entitled to some protection from petitioner's harassing tactics. As a deterrent and as partial compensation, damages should be assessed against appellant and in favor of appellees. Federal Rules of Appellate Procedure, Rule 38.

CONCLUSION

For the foregoing reasons, the order of the District Court should be affirmed and double costs and damages in an amount deemed just and proper by this Court and not less than $500, be assessed against appellant.

Respectfully submitted,

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The matters I have raised have not been thoroughly thrashed out, and none of these matters have been attended to. The MoPac Class A and Class B have not been evaluated according to the MoPac Charter so that the IRS can collect their over $100 million in taxes due them. This is no harassment, this is fact that must be attended to, and the U.S. Federal Courts must see to it that both Classes of MoPac Stocks be so evaluated. Appellant Gabriel is entitled to some protection from Appellants' tactics of attempting to use the U.S. Federal Courts and the U.S. ICC Agency to get his Class B MoPac property away from Him without first evaluating it according to the MoPac Charter and pay him its true value of over $22,500 per Share, and at the same time for not paying the U.S. Government Internal Revenue Service their over One Hundred million dollars coming to it in capital gains taxes that Mississippi owes it. As a deterrant and as partial compensation to their unorthodox methods of trying to use the U.S. Federal Courts and the U.S. Federal ICC Agency to get away with such a colossal heist of hundreds of millions of dollars of other peoples money and property, especially my Class B property and money, dauages should be assessed against MoPac and Mississippi River Corporation to pay me by in new securities what my Class B is worth under MoPac Charter.

Conclusion

For the foregoing reasons, the order of the District Court below should not be affirmed, and double costs and damages in an amount deemed just and proper by this Honorable Court Of Justice and not less than $500, be assessed against Plaintiffs-Appellees and Defendants-Appellees, to be given to some worthy charity that teaches the Word of God Our Almighty Creator and the testimony of Jesus Christ Our Lord and Saviour.

This Court should make a ruling that Appellant have his Missouri Pacific Railroad Class B equity bearing Common Stock evaluated according to the Missouri Pacific Railroad I.C.C. Charter or "Agreed System Plan" of Reorganization of 1954-1955, which is a law of the United States. At the very least the Judgment must be modified so that Appellant may have the right to seek appraisal by the I.C.C, of his Class B Common Stock.

Appellant did not ask for or agree to this "Plan of Recapitalization at any time. Appellant voted AGAINST this "Plan of Recapitalization," on June 15, 1972. Appellant is not suing as a Class, but he is suing for himself, to have his Class B Common Stock evaluated under MoPac's Charter.

The Missouri Pacific Railroad Class B Common equity bearing Stock must be evaluated under due process of law according to the Missouri Pacific Railroad Charter of 1954-1955 so that the United States Government Internal Revenue Service may become enabled to collect the over $100,000,000 in capital gains taxes that the U.S. Government has coming to it. This is the only way that justice can come to this milestone case.

Respectfully submitted,

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Dated: Sea Girt, New Jersey
August 13, 1975

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I have served the foregoing Reply Briefs to all of the above parties of Record by mailing each above party a Reply Brief by First Class Mail, properly addressed to each party.

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